

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY DANIEL PROFFITT,

Plaintiff,

v.

JOE LIZARRAGA,

Defendants.

No. 2:20-cv-00667-KJM-GGH

ORDER

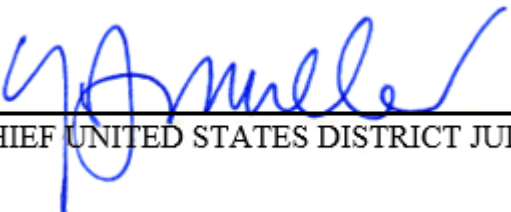
On June 16, 2020, this court adopted the magistrate judge's Findings and Recommendations and dismissed petitioner Jerry Proffitt's petition for habeas corpus, ECF No. 1. ECF No. 20. Petitioner then appealed the order to the Ninth Circuit, ECF No. 24, and the Ninth Circuit remanded the case to this court for the limited purpose of determining whether or not a Certificate of Appealability should be issued. *See Proffitt v. Lizarraga*, No. 20-1270, ECF No. 3 (July 15, 2020, 9th Cir.).

Under Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the court has considered whether to issue a certificate of appealability. Before petitioner can appeal this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a

1 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of  
2 appealability indicating which issues satisfy the required showing or must state the reasons why  
3 such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on  
4 procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that  
5 jurists of reason would find it debatable whether the district court was correct in its procedural  
6 ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid  
7 claim of the denial of a constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir.  
8 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473 (2000)). For the same reasons set forth in the  
9 magistrate judge’s Findings and Recommendations, which this court adopted, the court finds that  
10 issuance of a certificate of appealability is not warranted in this case. This finding does not  
11 prevent petitioner from requesting authorization from the Ninth Circuit to file a successive  
12 petition. *See* Order, ECF No. 20, at 2 (dismissing petition “as a second or successive habeas  
13 corpus application without prejudice to its refiling with a copy of an order from the Ninth Circuit  
14 Court of Appeals authorizing petitioner to file a successive petition”).

15 IT IS SO ORDERED.

16 DATED: July 21, 2020.

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19 CHIEF UNITED STATES DISTRICT JUDGE  
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